

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIRGINIA F. SPANO and DEPARTMENT OF THE ARMY,
U.S. ARMY TRAINING CENTER, Fort Jackson, N.C.

*Docket No. 95-2376; Submitted on the Record;
Issued June 11, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant is entitled to a schedule award for her back or for her lower extremities.

The Office of Workers' Compensation Programs accepted appellant's claim for a cervical and lumbar strain and a coccyx contusion for which appellant received benefits until August 22, 1993 when in a decision dated August 20, 1993, the Office terminated benefits. Appellant requested an oral hearing before an Office hearing representative which was held on June 30, 1994. In a decision dated August 29, 1994, the Office hearing representative affirmed the Office's August 20, 1993 decision. On November 8, 1994 appellant subsequently filed a claim for a schedule award.

By decision dated January 12, 1995, the Office denied appellant's claim stating that the accepted condition of a back injury is not compensable as a schedule award.

By letter dated March 21, 1995, appellant requested reconsideration of the Office's January 12, 1995 decision and resubmitted a medical report dated October 4, 1993 from Dr. James A. McCarthy, an orthopedic surgeon. In his October 4, 1993 report, Dr. McCarthy considered appellant's history of injury, performed a physical examination and reviewed x-rays. He diagnosed chronic lumbosacral strain with radiculitis involving both lower extremities and depression secondary to her back condition. On physical examination he noted moderate degree of muscle spasm and pain to palpation throughout the low back. Dr. McCarthy stated that appellant had a 40 percent permanent impairment to the spine and a 10 percent permanent impairment to both lower extremities secondary to her March 19, 1986 employment injury. In a report dated April 17, 1995, the District medical adviser reviewed Dr. McCarthy's October 4, 1993 report and stated that there was no objective evidence or physical findings on examination that appellant had any impairment of her lower extremities. He stated that there was no evidence of radiculopathy, none of muscle weakness, none of radicular pain and/or impaired sensation in a radicular pattern. The District medical adviser stated that the only objective abnormality in the

report was the atrophy of the left calf of 1/2 inch and of the left thigh of 3/8 inch but that was only temporary since Dr. C. Tucker Weston, an orthopedic surgeon, in his June 13, 1994 report stated that both thighs measure 23 inches and both legs measure 34 1/4 inches.

The record also contains the April 28 and May 18 and 20, 1993 reports of Dr. Hubert. S. Reid, a Board-certified orthopedic surgeon, who considered appellant's history of injury, performed a physical examination and reviewed diagnostic tests. In his May 18, 1993 report, he stated that appellant had no significant objective findings to support her continued subjective complaints of pain and rated her 5 percent permanently impaired for her subjective complaints. In a report dated December 20, 1994, the District medical adviser stated that Dr. Reid's April 28, 1993 report did not describe any discernible impairment of an upper or lower extremity according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1994).

By decision dated April 20, 1995, the Office denied appellant's reconsideration request.

The Board finds that appellant has not established that she has a schedule injury either to her back or lower extremities.

The schedule award provision of the Federal Employees' Compensation Act¹ provides for compensation to employees sustaining permanent impairment from loss or loss of use of specified members of the body. The Act's compensation schedule specifies the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act does not, however, specify the manner by which the percentage loss of a member, function, or organ shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.² For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.³

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the implementing regulations.⁴ As neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back,⁵ no claimant is entitled to such an award.⁶ In this case, therefore, appellant is not entitled to a schedule award for her back.

¹ 5 U.S.C. § 8107 *et seq.*

² *Arthur E. Anderson*, 43 ECAB 691, 697 (1992); *Danniel C. Goings*, 37 ECAB 781, 783 (1986).

³ *Arthur E. Anderson*, *supra* note 2 at 697; *Henry L. King*, 25 ECAB 39, 44 (1973).

⁴ *George E. Williams*, 44 ECAB 530, 533 (1993); *William Edwin Muir*, 27 ECAB 579, 581 (1976).

⁵ *See* 5 U.S.C. § 8107(c); *George E. Williams*, *supra* note 4.

⁶ *E.g.*, *Timothy J. McGuire*, 34 ECAB 189, 193 (1982).

The evidence also does not establish that appellant is entitled to a schedule award for her lower extremities. While Dr. McCarthy diagnosed that appellant had a 40 percent permanent impairment to the spine and a 10 percent permanent impairment to both lower extremities, he did not use the A.M.A., *Guides*. In his reports dated April and May 1993, Dr. Reid also did not use the A.M.A., *Guides*. The Board has held that a physician must properly use the A.M.A., *Guides* in assessing an appellant's impairment.⁷ Therefore Dr. McCarthy's and Dr. Reid's opinions are not probative. Further, in his December 20, 1994 report, the District medical adviser found that Dr. Reid's report of April 28, 1993 did not describe any discernible impairment of a lower extremity according to the A.M.A., *Guides* (4th ed. 1994). In his April 17, 1995 report, another District medical adviser found that Dr. McCarthy's October 4, 1993 report provided no objective evidence to support that appellant had an impairment to her lower extremities. The District medical adviser's opinions are rational and constitute the weight of the evidence.⁸

Accordingly, the decisions of the Office of Workers' Compensation Programs dated April 20, 1995 and January 12, 1995 are affirmed.

Dated, Washington, D.C.
June 11, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ See *Paul R. Evans*, 44 ECAB 646, 651 (1993).

⁸ See *Mary Wiley*, 34 ECAB 1742, 1753-54 (1983); *William H. Rollins*, 33 ECAB 432, 441 (1982).